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THE NAZIR'S ROLES IN THE DEVELOPMENT OF PRODUCTIVE WAQF

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Abstract

Waqf is one of Islamic financial instruments which has important functions in the development of Islamic economy, especially for Muslim countries including Indonesia. Indonesia as the largest Muslim country in the world has a great potential in management of endowment funds for development as well as other countries that have been successful in managing their endowments fund productively such as Egypt, Turkey, Bangladesh, Kuwait and Pakistan. The successful of management endowment fund can not be separated from the role of a nazir who manages endowment funds optimally. Therefore, a nazir is required to be competent and professional with their competency and fulfil the certain criteria in the hope the endowment fund can be managed more productively.

Keywords : *Waqf, Productive, Nazir, Professional, Competency.*

INTRODUCTION

Waqf is one of the Islamic financial instruments which has a particular function in the development of Islamic economy, especially for the economy of Muslim countries including Indonesia. Therefore, waqf can be used as a source of finance for the development of Muslim countries and it must be managed in a professional management to obtain its benefits for society.

Waqf property is the Muslims' asset managed for social purposes and it needs a special institution to manage this endowment fund. Although the law in which explains the setting up an Islamic waqf institutions is Sunnah, but these institutions can thrive in some Muslim countries like Saudi Arabia, Egypt, Turkey, Jordan, Qatar and others (the Guidance Directorate and Hajj Operator, 2003). This proves that the waqf has been beneficial to the welfare of the People.

For example, the state of Turkey is one country that has a very interesting waqf history to learn. Since the time of the Ottoman Empire, waqf has been supporting a wide range of public services and sustainable financing of various artistic and cultural buildings. During the Republican administration, by adopting the Civil Law (Law No. 903), waqf has gained a new identity. Under the law, the Government of the Republic of Turkey formed the General Directorate of waqf in charge of running all tasks of the ministry of waqf formerly applicable in the era of the Ottoman Empire. Even in 1983, it was formed the ministry of waqf in Turkey to oversee the governance of waqf. At this stage, all the waqf managements in Turkey are set by legislation.

In Bangladesh, the cash waqf has very important roles in mobilizing funds for the development of waqf properties. Social Investment Bank Ltd (SIBL) introduced the cash waqf certificate, a new product in the history of banking. In Bangladesh, SIBL has opened the opportunity for the public to open cash deposit accounts of waqf for achieving some of the aims, namely: to make banking as a facilitator to create cash waqf and to assist in waqf management, to help mobilize private savings, to increase social investment, to transform people's savings into capitals, to provide benefits to the wider community especially the poor from the sources taken from the wealthy, to create awareness among the rich of their social responsibility to the community, to help the development of social capital market, to assist the developmental efforts of the nation in general and to create a unique relationship between social security and social welfare.

Then, in Kuwait waqf culture is as old as the existence of the people of Kuwait. At first, the waqf assets in Kuwait were limited and they were only included mosques, old houses, and money. But after the discovery of oil resources, the form of waqf properties are growing rapidly. Many waqf properties have been built to be commercial complexes, residential buildings, shops and recreation centres. In 1921, the Kuwait government established the Ministry of waqf, and then in 1948 this department has been managing the places of worship and bringing care for those who are weak or very poor.

Meanwhile, the practise of waqf in Indonesia has existed since colonial times but it started to receive more attention from practitioners, academics and government after the 2000s. It is showed by many writings discussed the concept of waqf both on electronic media and in printed media. But this idea reached its peak after the issuance of Law No. 41 of 2004 on Waqf which legalized by President Susilo Bambang Yudhoyono. The legislation also initiated the emergence of money waqf. Money waqf is the endowment in the form of money and managed productively and it profits distributed to the party determined by the person who does waqf. Since then, the management of productive waqf has been becoming a lot of attention for various circles.

Although the statute of waqf in Indonesia has long published for about 12 years ago, unfortunately until now, the application of waqf in Indonesia has not been able to resolve the social problems faced by the nation. This is proved by many Muslims in Indonesia who live in poverty, the high number of unemployment causing the high crime rate, and limited public facilities which can be enjoyed by the community. Supposedly, the existence of waqf may be one solution to

overcome these problems. However, one of the factors that led to the ineffective role of waqf factions in overcoming those problems is due to lack of professionalism of the nazirs to manage the waqf property.

According to Supriyadi in the journal Nawawi (2013), the nazirs may become unprofessional because it is assumed that the assets of waqf belonging to the God and its activities should be done sincerely, as a consequence, the management of waqf is only as an extra job, then the asset management waqf may become dormant because those are not managed seriously. In addition, theoretically, the nazir was not included in the pillars of waqf so that the management of waqf become unprofessional. A skilful nazir should give priority to the management of waqf as a main profession and it is not as a side job whereas the benefits of the management of waqf assets can be the foundation to fund the living expenses of his and his family's. As the professionalism may be associated with major profession, having the expertise and earning a decent salary. Thus, in this case, the lack of public interest in participation of productive waqf is assumed because of unprofessional nazir. Junaidi and Thobied (2008) state that the factors which led to lack of professional among nazirs to manage endowment funds, namely: 1. Strong understanding that waqf is more concerned with individual aspects than the immortality of the benefits, 2. The low quality of human resources among nazirs to manage waqf property and, 3. The nazirs have less power to manage waqf for the welfare of the people even more put personal interests.

Therefore, the discussion on the Nazirs' role has become a serious concern for all circles so that the waqf fund management can be managed properly and it is expected to solve the economic problems faced by the countries currently such as: to overcome the problem of unemployment, to reduce poverty and even to provide funding sources for infrastructure development.

DEFINITION OF WAQF

Waqf in Arabic means "*al-habsu*", which comes from the verb of *habasa-yahbisu-habsan*, it means keep people away from something or imprison. Then it is evolved into the word "*habbasa*", which means donating treasures for God. The word waqf itself comes from the verb of *waqafa* (fi'il madhi)-*yaqifu* (fi'il mudhari) - *waqfan* (isim masdar) which means stopping or standing. While *waqf* according to the *syara* terms is "hold treasure that may be taken advantage without spending or destroy the object (the *ain*) and used for good" (Al-Alabij, 1997).

According Fathurrohman (2013), waqf means a legal act of a Waqif to restrain his property, either temporarily or permanently, use it repeatedly in the public interest or for the special interests that correspond to Shari'ah principles.

According to Indonesian Law No. 41 in 2004, waqf is a legal act of a Waqif to separate and/or hand over part of his wealth either permanently or for a specified period in accordance with his interests for purposes of worship and/or general well-being according to sharia. Waqf is held by fulfilling the following elements:

- a. Waqif
- b. Nazir
- c. Waqf possessions (property)
- d. Pledge of waqf
- e. Appropriation waqf property
- f. Waqf duration

So, it can be concluded that waqf is the Waqif's deed which releases some wealth to be exploited or used for the benefit of Muslims in a certain period of time or forever.

However, it is not found specifically in the Koran and Hadith that states explicitly that legitimate legal basis to advocate waqf. But, in general, it is expressed in the Koran and the Hadiths to encourage believers to set aside a portion of his extra wealth for productive projects of the community. This worship is prescribed from some of the verses of the Quran and Hadith, among others:

"O you who believe, spend from the good things which you have earned and from that which We have produced for you from the earth. And do not aim toward the defective therefrom. ... "(Al-Baqarah, verse 267).

And the God's decree in Surah al-Hajj verse 77:

"O you who believe, do the ruku', bow, worship your Lord and do yourself a favor so that you prosper" (Al-Hajj: 77)

The basic Hadith that advocates for doing endowments:

The hadith was recited by the Jama'ah; It says that Umar had ever received a plot of land in Khaibar, then he asked me (the Prophet): O Messenger of Allah, I got a piece of land in Khaibar, there is no a better property that I have never gotten before (than the land), then what do you want to say to me? Then the Prophet replied: "If you will, hold the land and share the results". Umar then endowed it to the terms that it may not be sold, should not be granted and should not be inherited. Later, the results of wherewithal were given to the poor and close relatives, to liberate the slaves, to entertain guests, and for those who ran out of stock in the trip (ibnussabil) and it is not innocent for the person who manages it to take part of the results in a reasonable manner and to feed (his family) on the condition that it should not be proprietary. In another recital, it is mentioned that the land should not be owned substantially (ash-Syaukani, Volume IV: 127).

In terms of benefits or products, waqf can be divided into two groups. The first, Direct waqf (*al waqfu al mubasyir*), where the endowment benefits can only be realized using waqf property directly as a mosque for prayers, a school to learn. In this condition the object itself has benefits for the *mauquf alaih*. This waqf mubasyir has some disadvantages that must be anticipated by the nazir to seek other sources of funds for operational costs and treatments. The second, Productive waqf (*al awquf al istismari*). In productive waqf, *mauquf alaih* is not in direct contact with the waqf property, they get part of the proceeds from the management of waqf property. For example, by endowing farm, factory, and shop for students al-Azhar. In this case, the al-Azhar students will get part of results from the management of waqf property without direct contact with the waqf asset. Different from mubasyir waqf that requires other sources to survive, productive waqf can support itself: the management of waqf property was partly used for operating expenses and the rest is distributed to *mauquf alaih* predetermined wakif. (Qahaf, 2006)

And Mundzir Qahaf is also divided the waqf into three categories:

- a. Social waqf (khairi)
- b. Waqf for families
- c. Combined waqf (musytaraka).

But in general, waqf can be divided into two general categories:

1. Family waqf (relative): the waqf whose an aim is to help the relatives of those donating.
2. Khairi Waqf (public): the purpose of waqf is to be benefit for general public.

In addition, Waqf has a social function, besides, it also has the function as a worship especially for the waqif because the benefits from the endowed property may produce the reward and it will continue to flow for the Waqif during waqf property is being used. As the Prophet Muhammad pbuh said "when a man is dead, then it stops the deeds except for three cases, namely jariah deeds (waqf), beneficial knowledge, and a pious child who prays for him" (HR. Muslim). With the privilege of the reward continues to flow. And it should make the Muslims to compete donating his wealth as those who have been done by the companions of the Prophet Muhammad previously. Whereby when Tabuk war, the Prophet advocated the Muslims to donate funds to finance the war. At that time Abu Bakr U.S. gave 100% of his wealth, Umar bin Khattab gave 50% of his wealth and Usman bin Affan provided supplies for a third of the Islamic forces in the form of 950 camels, 50 horses and 1,000 dinars.

THE ROLE OF NAZIR IN DEVELOPMENT OF PRODUCTIVE WAQF

The word 'Nazir' etymologically comes from the verb of *nadzira-yandzaru*, it means care and grooming. While in terminology of fiqh, it means a person entrusted with the power and duty to administer and maintain waqf property (Hamami, 2003).

Meanwhile, the meaning of Nazir according to the Regulation of Indonesian Government No. 28 of 1977 is a group of people or legal entities entrusted with the task of maintenance and management of waqf assets. The definition of Nazir according to Law No. 41 of 2004 is the party who receives waqf property from the waqif to be managed and developed in accordance with the designation. The requirements to be a nazir are stated in the Law No. 41 of 2014 as follows:

1. A nazir must be the citizen of Republic of Indonesia
2. A nazir must be a Muslim
3. A nazir must be an adult
4. A nazir must be trustworthy
5. A nazir must have a good ability both physically and spiritually
6. And a nazir is not obstructed by legal actions.

Within these laws also set the tasks owned by the nazir, namely:

- a. Doing the administration the property of waqf
- b. Managing and developing the property of waqf in accordance with the objectives, functions and operations.
- c. Supervising and protecting the property of waqf
- d. Reporting the execution of tasks to Indonesian Waqf Institution.

In the performance of these tasks, the nazir can receive compensation from the net proceeds for the management and development of the waqf property in the amount not more than 10% (ten percent).

Aziz (2014) states that the nazir is one who manages the waqf, builds and improves the products and shares the resulting profits to *mustahik*, as well as defend the truth and the other duties that may not be mentioned one by one and those are also impossible to be restricted, except with the advantage and the benefit of those works.

And according to Al Munawwar (2004), the nazir is a person entitled to act on waqf property, either taking care of it, maintaining, or distributing the endowment to those who deserve to, or doing something that the assets grow well and eternal.

Based on previous understanding, it can be concluded that the nazir has the right to manage the waqf property ranging from activities to manage and maintain it up to distribute the benefits so that the *mauquf alaih* can enjoy the benefits of the waqf property. Nazirs' intervention is

indispensable here, especially in the management and maintenance of waqf property that waqf property can be utilized appropriately.

In order to optimize the role of waqf in the midst of a society that requires an institutional role, the management of waqf property may be successful or not depending on how skillful of the nazirs are. Therefore, the Waqif will seek truly competent nazir in managing their property endowments.

The role of nazirs in productive waqf is different from their roles in the direct waqf whereas the direct waqf, the role of nazirs only requires to be trustworthy (reliable), meanwhile the nazirs of productive waqf are not only required to be trustworthy, but also to be professional in managing waqf property. This is because in the productive waqf, the *mauqif alaih* is not in direct contact with waqf property but it is invested into a productive source of funding to generate profits or benefits that will be felt / enjoyed by *mauqif alaih*. Therefore, it also needs special skills possessed by each nazir to manage the property of productive waqf. For example, a waqif donated his wealth in the form of oil palm plantations to the nazirs. That waqf property can produce economical benefits and can be felt by *mauqif alaih*, then the nazirs must have the knowledge, expertise and ability to develop and manage the oil palm plantation.

As stated by Mubarak (2008) that the management and the development of waqf asset in contemporary era, demanding to follow the paradigmatic pattern productively in the sense of personality benefits, responsibility, professionalism of management and social justice, and also to fulfill the reformist of waqf understanding, professional nature management, nazir management, and recruitment systems of the waqf managed by a business approach and oriented on the profits to be handed over to the recipients.

Futhermore, Islam is also very concerned with all kinds of productive works. The Koran has not only been raising the productive work at the level of worship, but it also mentions more than 50 verses in conjunction with the concept of faith. Their relationship is like the affair of the root and the tree relating the two. In this case, the Koran instructs to continue the jobs after praying. As the humans as the caliph of God, it is their duties to work hard to build this world and explore its resources well. The Koran is against laziness and it prohibits wasting time due to laziness or engages in unproductive activities (Shihab, 1999). Therefore, a nazir is in demand to be able to manage the waqf property productively with professional that waqf property can continue to grow and be felt its benefits by *mauqif alaih* ongoing basis.

To become a professional nazir, one should have the competence because the competence is the basis for professional work and there is no professionalism without competence. According to Aziz (2014), there are two competencies that must be owned by a nazir i.e., *Diniyah* Competence and *Kifayah* Competence.

Diniyah competence is the competence of nazirs related to religions, such as the knowledge of syar'i and its experience, coupled with the intention of waqf institutions, in order to preach and convey the teachings of Islam to mankind. Thus, the *diniyah* competence is divided into three, namely:

1. Scientific-Diniyah Competence

These Nazir's competencies relating to knowledge of Islam, including: a). Understanding the pillars of Iman, Islam and Ihsan, b). Knowing the sources of Islamic law, such as Al-Quran, Al Sunnah and Ijtihad, c). Being able to read the Koran properly, d). Understanding the verses and the hadiths of the Prophet relating to *zakat*, *infak* and *sadaqah* (alms), e). Understanding the Law of waqf, both in *fiqh* or regulatory jurisprudence.

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3. *Understanding the waqf management in various countries*

A nazir is also required to have knowledge of waqf in various countries, especially for the countries whose waqf management that have been developed such as Egypt, Turkey, Bangladesh and other countries. This becomes a great reference material for the nazir manage waqf property productively.

4. *Being able to access a candidate Waqif*

The ability to access a candidate Waqif is also indispensable for the nazir so that the amount of assets managed are becoming more and its benefits received by the *mauquf alaih* will increase. A nazir must have a strong appeal to access Waqif candidates to do the waqf. An intensive socialization is necessary to gain the number of candidate waqifs.

5. *Having ability to manage money*

The ability of a Nazir to manage money is also needed to convince the waqifs that their waqf property is managed by the true party or institution. If the nazirs are not able to manage the money, it will arise bad image of the nazirs by the Waqif that they are not trustworthy and competent in managing waqf property.

6. *Administration of beneficiary account*

The nazir must have administration of beneficiary account so that the nazir knows what to do with the waqf property.

7. *The distribution of investment returns*

The results of the investments made by the nazir have to be distributed to the *mauquf alaih* accordance with what has been mandated by the previous Waqif. If the waqif endow his waqf property for education, the nazir must distribute its results in education. But if the waqif endow his waqf property for the orphans and the poor, the nazir must distribute the investment for orphans and the poor.

8. *Transparent and accountable*

A nazir should report each activity on the acceptance and the expenditure of funds transparently and accountably (can be accounted) to the waqif, *mauquf alaih*, government and society. It is necessary to avoid the suspicion of the various parties to the nazir or ineffective management of the waqf property.

In Indonesia, the nazirs are monitored and supervised by the Indonesian Waqf institution as mentioned in Law No. 41 of 2004 that the Duties and Authorities of Indonesian Waqf Institution are:

1. To provide guidance to nazirs in managing and developing the waqf property.
2. To manage and develop the property in the scale of national and international scale.
3. To Approve or give permission for change of the designation and status of waqf property.
4. To lay off and replace the nazirs.
5. To provide approval for exchange of waqf property.
6. To provide advice and judgment to the government in drafting policies in the field of waqf system.

Then, through Regulation of Indonesian Waqf Institution No. 1 Year 2007 on the Organization and Work Procedure, it lays out its duties and powers as follows:

1. Providing guidance to nazirs in managing and developing the waqf property.
2. Creating guidelines for the management and development of waqf property.
3. Performing the management and development of waqf property nationwide and internationally and displaced waqf property.
4. Giving consideration, approval, and / or permit the change in designation and status of waqf property.
5. Giving consideration and / or approval of exchange waqf property.
6. Providing advice and judgment to the government in policymaking of waqf system.
7. Receiving, assessing, publishing a proof of registration nazirs, and raising the nazirs who has exhausted his tenure.
8. Laying off and replacing the nazirs replace if necessary.
9. Providing advice the Minister of Religious Affairs in appointing the Islamic Financial Institutions as Waqf Receivers.
10. Receiving the Pledge Deed of Waqf registration besides money from the Official of Waqf Pledge Deed.

It is clear that the Indonesian Waqf Institution also has an important role in improving the quality and competency of the nazirs. Whereas this institution also has a duty to foster the nazirs in managing waqf property.

CONCLUSION

A nazir has an important role in managing the development of productive waqf. His role is very significant especially in determining the success or failure of the empowerment of those waqf assets. Therefore, the waqf nazir either an individual nazir, organizational nazirs, or incorporated nazirs, are required to have the competence and professionalism in empowering the assets of waqf.

To be a professional nazir, the Nazir must have competencies, including *Diniyah* competence and *Kifayah* competence. Then, a Nazir should have particular ideal requirements. This is necessity so that the nazirs in future will have more active role in managing waqf property productively according to the sharia provisions.

We hope the nazirs not only in Indonesia but also in the worldwide begin to evaluate and figure out their shortcomings by working with various parties and to promote waqf management. Likewise with Indonesian Waqf Institution to continue to conduct the intensive trainings to the nazirs in Indonesia.

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